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**CASE COMMENT:
SHAKTI VAHINI VS UNION OF INDIA & OTHERS**

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Citation: Writ Petition (civil) no. 231 of 2010

Petitioner: Shakti Vahini

Respondents: union of India, Ministry of Home Affairs and Ministry of women and Child Development

Date of judgement: March 27,2018

Bench: CJI Dipak Mishra, A.M Khanwilka and Dr. D.Y Chandrachud

Facts of case:

The petitioner-organization was authorized for conducting Research Study on “Honour Killings in Haryana and Western Uttar Pradesh” by order dated 22.12.2009 passed by the National Commission for Women. It is stated that there has been a series of such honour killings in Haryana, Punjab and Western Uttar Pradesh. According to National Crime Records Bureau (NCRB), a total of 28 cases in 2014, 251 cases in 2015 and 77 cases in 2016 were reported with motive as Honour Killing (which includes cases registered under murder (section 302 IPC) & culpable homicide not amounting to murder (section 304 IPC) in the country.¹

The Writ Petition has been preferred under Article 32 of the Constitution of India seeking directions to the respondents- State Governments and the Central Government to take preventive steps to combat honour crimes, to submit a National Plan of Action and State Plan of Action to curb crimes of the said nature. That apart, prayers have been made to issue a writ of mandamus to the State Governments to launch prosecutions in each case of honour killing and take appropriate measures.²

The actions which are found to be linked with honour based crimes in the petitions are-

- i. loss of virginity outside marriage;

¹Honour killing cases reported, available on <https://mha.gov.in/MHA1/Par2017/pdfs/par2018-pdfs/ls-31072018-English/2106.pdf>

² <https://www.indianemployees.com/judgments/details/shakti-vahini-versus-union-of-india-and-others>

- ii. pre-marital pregnancy;
- iii. infidelity;
- iv. having unapproved relationships;
- v. refusing an arranged marriage;
- vi. asking for divorce;
- vii. demanding custody of children after divorce;
- viii. leaving the family or marital home without permission;
- ix. causing scandal or gossip in the community,
- x. falling victim to rape.

ISSUES RAISED BY THE PARTIRS:

Petitioner's Contention:

It is contended that there has been increased no. of cases in Haryana Punjab and Uttar Pradesh of honour killing which create fear among young people who want to get married.

The social pressure and the consequent inhuman treatment by the core groups who arrogate to themselves the position of law makers and impose punishments which are extremely cruel instill immense fear that compels the victims to commit suicide or to suffer irreparably at the hands of these groups.³

The action of a woman or a man in choosing a life partner according to her or his own choice beyond the community norms is regarded as dishonour which, in the ultimate eventuate, innocently invites death at the cruel hands of the community prescription.⁴

³ Supra at page no. 4 paragraph 3 of 54 of the judgement

⁴ Supra at page no. 5 paragraph 4 of 54 of the judgement

It is contended in the petition that the parallel law enforcement agency consists of leading men of a group having the same lineage or caste which quite often meets to deal with the problems that affect the group.

These agencies call themselves Panchayats which have the power to punish for the crimes and direct for social boycott or killing by a mob.⁵

Respondent's Contention:

It has been contended that honour killings are treated as murder as defined under Section 300 of the IPC and punishable under Section 302 of the IPC. As the police and public order are State subjects under the Constitution, it is primarily the responsibility of the States to deal with honour killings.⁶

On September 9, 2013, the Union of India has filed another affidavit stating, inter alia, that in order to tackle the issue of 'honour killings', a Bill titled 'The Prohibition of Interference with the Freedom of Matrimonial Alliances Bill' has been recommended by the Law Commission of India vide the 242nd Law Commission Report. The Union of India has further contended that since the matter of the 242nd Law Commission Report falls under List III, i.e., Concurrent list of the Seventh Schedule to the Constitution of India.⁷

An affidavit has been filed by the State of Punjab stating, inter alia, that it is not taking adversarial position and it does not intend to be a silent spectator to any form of honour killing and for the said reason, it has issued Memo No.5/151/10-5H4/2732-80 in the Department of Home Affairs and Justice laying down and bringing into force the revised guidelines/policies in order to remove any doubt and to clear any uncertainty and/or threat prevalent amongst the public at large. The policy, as put forth, envisages dealing with protection to newly wedded couples who apprehend danger to life and liberty for at least six weeks after marriage. It also asserted that the State is determined to take pre-emptive, protective and corrective measures and whenever any individual

⁵ Supra at page no.7 paragraph 7 of 54 of the judgement

⁶ Supra at page no.9 paragraph 8 of 54 of the judgement

⁷ Supra at page no.9 paragraph 9 of 54 of the judgement

case comes to notice or is highlighted, appropriate action has been taken and shall also be taken by the Government.⁸

The State of Haryana has filed an affidavit denying the allegations made against the State and further stating that adequate protection has been given to couples by virtue of the order of the High Court and District Courts and by the police. The stand of the State of Haryana is that an action plan has already been prepared and the Crime Against Women Cells are functioning at every district headquarter in the State and necessary publicity has already been given and the citizens are aware of those cells.⁹

The State of Jharkhand has filed its response stating, inter alia, the measures taken against persons involved in such crimes. Apart from asseverating that honour killing is not common in the State of Jharkhand, it is stated that it shall take appropriate steps to combat such crimes.¹⁰

A counter affidavit has been filed on behalf of NCT of Delhi. The affidavit states that Delhi Police does not maintain separate record for cases under the category of “Honour Killing”. However, it has been mentioned that by the time the affidavit was filed, 11 cases were registered. It is urged that such cases are handled by the District Police and there is a special cell functioning within Delhi Police meant for serious crimes relating to internal security and such cases can be referred to the said cell. The Department of Women and Child Development has also made arrangements for rehabilitation of female victims facing threat of honour killing and efforts have been made to sensitize the society against commission of such crimes.¹¹

The State of Rajasthan, in its reply, had strongly deplored the exercise of unwarranted activities under the garb of khap panchayats. The State of Rajasthan contends that it has issued circulars to the police personnel to keep a check on the activities of the panchayats.¹²

The State of Uttar Pradesh has filed two counter affidavits wherein it is stated that it is the primary duty of the States to protect the Fundamental Rights enshrined and guaranteed under the Constitution of India. Directions are being given to the police stations to keep a close watch on

⁸ Supra at page no.11 paragraph 11 of 54 of the judgement

⁹ Supra at page no.12 paragraph 12 of 54 of the judgement

¹⁰ Supra at page no.12 paragraph 13 of 54 of the judgement

¹¹ Supra at page no.13 paragraph 14 of 54 of the judgement

¹² Supra at page no.14 paragraph 15 of 54 of the judgement

the activities and functioning of the Khaps. The State of Uttar Pradesh has acceded to comply with any directions which this Court may issue.¹³

The State of Bihar has, in its affidavit, acknowledged that honour killing is a heinous crime which violates the fundamental rights of the citizens. It has been asserted that the State of Bihar has initiated a scheme to provide National Saving Certificate amounting to Rs.25,000/- as incentive to any woman performing inter-caste marriage in order to ensure their economic stability.¹⁴

Analysis of the issues:

Main issues are -

- Whether khap panchayat are authorised to take such actions like honour killings?
- Whether an individual has a right to marry of his/her choice?

What is khap panchayats?

A *Khap* is a community organisation representing a clan or a group of related clans. They are found mostly in northern India, particularly among the Jat people, Western Uttar Pradesh and Haryana, although historically the term has also been used among other communities. A *Khap Panchayat* is an assembly of Khap elders, and a *Sarv Khap* is an assembly of many Khap Panchayats.

Khaps are not affiliated with the formally elected government bodies and is instead concerned with the affairs of the Khap it represents. It is not affiliated with the democratically elected local assemblies that are also termed Panchayat. A Khap Panchayat has no official government recognition or authority, but can exert significant social influence within the community it represents.¹⁵

Legality of khap panchayats according to constitution

¹³ Supra page no.14 paragraph 16 of 54 of the judgement

¹⁴ Supra page no.15 paragraph 17 of 54 of the judgement

¹⁵ Khap, available at https://en.wikipedia.org/wiki/Khap#cite_note-Venkatesan-20

As discussed earlier, the term khap panchayat is nowhere mentioned in the constitution. It is merely a caste based customary body created by the group of people who think old age customs and traditions give them authority to protect the culture and society. It has no legal right but act as de facto courts. These bodies are not elected under the Panchayati Raj Adhiniyam.

Any act of Khap panchayats which is contrary to any law, is triable in any judicial court, if any cognizable offence has been committed; police is supposed to take cognisance¹⁶.

Marriage under personal law

According to Hindu Marriage Act 1955, An individual who is Hindu, Budh Sikh and Jain can marry to the person who has converted in the above mentioned religion and can register themselves under this act. In this act marriage is a religious sacrament not a civil contract.

Marriage under special marriage act,1954

According to this act, any person can marry anyone irrespective of their religion. In this act marriage is a civil contract, no religious ceremony is necessary to complete the marriage.

Right to marry is a fundamental right

If two consenting adults are agreeing to marry each other; no person can punish them for that. This is recognised under article 19 and article 21 of the constitution. Consent of Family, Community, Clan not necessary for marriage between Two Adults. The **right to marry** is a part of the **right to life** under Article 21 of the Indian Constitution.

Thus, no act and constitution is defined that inter caste, inter religion and sagotra marriages are prohibited and illegal.

International perspective:

The **right to marriage** is also stated under Human **Rights** Charter within the meaning of the **right** to start a family. The **right to marry** is a **universal right** and it is available to everyone. The Universal Declaration of Human Rights (UDHR) urges member nations to promote a number

¹⁶ Legality of khaps, available at <https://www.quora.com/Is-Khap-panchayat-legal-according-to-Indian-Constitution>

of human, civil, economic and social rights asserting these rights as part of the "foundation of freedom, justice and peace in the world.

Article 16 of UDHR gives right to freely choose a spouse and to enter into marriage only with their free and full consent.

Article 23 of the International Covenant on Civil and Political Rights 1966 defines that The right of men and women of marriageable age to marry and to found a family shall be recognized and No marriage shall be entered into without the free and full consent of the intending spouses.

Article 10 of the International Covenant on Economic, Social and Cultural Rights 1966 defines that marriage must be entered into with the free consent of the intending spouses.

The European Convention on Human Rights (ECHR) states that all men and women, who have reached the age at which they can legally marry, have the right to get married and to start a family.

Article 12 defines that men and women of marriageable age shall have the right to marry and to found a family, according to national laws governing the exercise of this right.

The Supreme Court held:

SC reaffirmed that Right to choose a life partner is a fundamental right, consent of family, community, clan not necessary for marriage between two adults. The Supreme Court held that "When two adults consensually choose each other as life partners, it is a manifestation of their choice which is recognized under Articles 19 and 21 of the Constitution"

Preventive measures issued by Supreme Court

The State Governments should forthwith identify Districts, Sub-Divisions and/or Villages where instances of honour killing or assembly of Khap Panchayats have been reported in the recent past, e.g., in the last five years.

If any information about the meeting is received by the police officer; he shall convey it to senior police officer i.e. Deputy Superintendent of Police. DSP will interact with the khap panchayat and prevent the meeting. If the meeting still conducts by the khap panchayat; DSP will remain present

in the meeting and keep an eye in the meeting that no harmful action is taken for the couples and their family.

If the Deputy Superintendent of Police, after interaction with the members of the Khap Panchayat, has reason to believe that the gathering cannot be prevented and/or is likely to cause harm to the couple or members of their family, he shall forthwith submit a proposal to the DM/ SDM / Competent Authority of the concerned area for issuing orders to take preventive steps under the CrPC including by invoking prohibitory orders under Section 144 CrPC and also by causing arrest of the participants in the assembly under Section 151 CrPC.¹⁷

Remedial measures issued by the Supreme Court

SHO, SP and District Magistrate has to ensure that the married couples are safe or not. For this purpose, police protection and safe houses will be provided for them.

If the information is received by the SHO/SP/DM, either of them will immediately lodge an F.I.R. under the provisions of the IPC including sections 141,143, 503 read with 506 of IPC.¹⁸

Punitive measures issued by the supreme court

Any failure by either the police or district officer/officials to comply with the aforesaid directions shall be considered as an act of deliberate negligence and/or misconduct for which departmental action must be taken under the service rules. The departmental action shall be initiated and taken to its logical end, preferably not exceeding six months, by the authority of the first instance.

These Special Cells shall create a 24-hour helpline to receive and register such complaints and to provide necessary assistance/advice and protection to the couple and final report shall be submitted to the magistrate under section 173 of CrPC.¹⁹

Researcher's conclusion:

Indian society is diverse in nature. Different types of culture, customs and traditions are followed by the people. Some customs define the unity of Indian people and some of them are create a dark

¹⁷ Supra at page no.48 paragraph no.53 of 54 of the judgement

¹⁸ Supra at page no.50 paragraph no. 53 of 54 of the judgement

¹⁹ Supra at page no.52 paragraph no.53 of 54 of the judgement

side which no one wants to see. Shakti vahini vs union of india case is the best example of the freedom which must have been given to the individual irrespective of gender.

In this case supreme court held that right to choose a life partner of one's own choice is a fundamental right envisaged under article 21 of the constitution.

As we all know that women in the family are to be considered as liability and men are to be treated as protector of the culture. If any step which affect the culture, reflectes as a destroyer of the culture which leads to honour killing. The punishments given by the khap panchayats are so cruel and harsh which leaves a negative impact on society. Now the question arises that the step to marry of one's own choice is so harmful to the society that even the family members of the victims do not hesitate to kill their family member or is it just a pressure of the society which pushes them to do this?

According to George Washington, 'Liberty, when it begins to take root, is a plant of rapid growth.' Shakti vahini case is the surely the step by which a vast change can be brought in the society.